

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 20 2003

Federal Communications Commission
Office of Secretary

Inth Matter of)

Amendment of Section 73.622(b)
Table of Allotments,)

Digital Television Broadcast Stations
(Jackson, Mississippi))

MM Docket No. 01-43
RM- 10041

To: Allocations Branch
Media Bureau

SECTION 1.65 SUPPLEMENT

CivCo, Inc. ("Civic"), the licensee of WLBT-TV, Jackson, Mississippi, by its attorneys and pursuant to Section 1.65 of the Commission's Rules, hereby respectfully submits this Supplement in the above-captioned proceeding.

In a Petition for Rule Making dated May 1, 2000, Civic proposed the amendment of Section 73.622(b), the DTV Table of Allotments, by substituting Channel 9 as WLBT-TV's paired DTV allocation in lieu of Channel 51, as originally allotted. On January 2, 2001, Civic filed a Supplement demonstrating that the proposed channel change would not impact any prospective Class A television station (the "Class A Supplement"). On February 20, 2001, the Media Bureau's Video Services Division released Civic's proposal on a *Notice of Proposed Rule Making*. Now, exactly two years later, the proceeding remains pending without any serious or material issues in dispute.

¹ 47 C.F.R. § 1.65(a). Civic is the successor-in-interest to Civic License Holding Company, Inc. Both companies have the same ultimate ownership.

Section 1.65(a) of the Commission’s rules requires “applicants” to furnish additional information in the event of “a substantial change as to any . . . matter which may be of decisional significance. . . .”² Even assuming that Section 1.65 applies to petitioners as well as applicants, Civic submits that no substantial change of potentially decisional significance has occurred since the close of the pleading cycle. Nonetheless, out of an abundance of caution, Civic hereby supplements its pleadings in this proceeding to report a development concerning WBMS-LP, Channel 10, Jackson, Mississippi.

As disclosed previously, the WLBT-DT channel change proposal causes a minor overlap of WLBT-DT’s proposed Channel 9 contour with the contour of WBMS-LP. Nevertheless, as Civic reported in its Class A Supplement, the channel change would not result in *any* interference to WBMS.

Thirty days ago today, the Commission provided public notice of a decision adopted by the Low Power Television Branch granting WBMS’s application for a Class A license. That decision largely ignored WBMS’s own admission that a statutory prerequisite to Class A status was not satisfied, and it applied a legal standard different from that clearly specified in the Community Broadcasters Protection Act of 1999. Consequently, Civic is today submitting an Application for Review of the decision, which should result in the reversal of the arbitrary and capricious grant of Class A status for WBMS.

The Branch’s decision has no decisional relevance to the WLBT-DT channel change proceeding, because even the erroneously granted Class A status for WBMS does not preclude a grant of the channel change proposal. In the *Class A Order*, the Commission authorized the “use of the Longley-Rice terrain dependent propagation model and OET Bulletin 69 to support

² *Id.*

waivers of the Class A interference protection requirements.”³ Accordingly, the Video Division has accepted and relied upon alternative propagation methods to approve DTV channel substitutions notwithstanding prohibited contour overlap with Class A television stations. In the WPPB-DT proceeding for example, the Video Division recently affirmed the grant of a DTV channel change for the Boca Raton television station notwithstanding prohibited contour overlap with first-adjacent Class A television station WJAN-CA.⁴ In that case, the petitioner had demonstrated, using Longley-Rice methods, that WPPB-DT would cause just 0.42 percent new interference to WJAN-CA, which is below the 0.5 percent “rounding allowance.”

In this case, Civic’s Class A Supplement likewise demonstrated that the WLBT-DT channel change proposal would not cause interference to any low power television station then deemed eligible to apply for Class A status, using either the FCC’s standard propagation curves or the methods specified in OET Bulletin. Out of an abundance of caution, Civic has retained duTreil, Lundin & Rackley to analyze (again) the impact of WLBT-DT’s proposed Channel 9 operations on WBMS’s existing Channel 10 operations. That analysis, using OET-69 methods, confirms Civic’s prior showing that WLBT-DT would not cause *any* interference to WBMS. That analysis also confirms that WLBT-DT would not cause *any* interference to WBMS’s recently authorized 3 kilowatts contour either.’ The duTreil analysis is attached hereto as Exhibit A.

³ *Establishment of a Class A Television Service, Report and Order*, 15 FCC Rcd. 6355, ¶ 71 (2000) (“*Class A Order*”), *on recon.*, 16 FCC Rcd 8244 (2001).

⁴ *Amendment of Section 73.622(b) (Boca Raton, Florida)*, DA 02-3176, rel. Nov. 20, 2002.

⁵ The licensee of WBMS filed Comments in response to the *Notice* wherein he claimed that WLBT-DT channel change would have “an impact” on WBMS. In an engineering analysis attached thereto, Byron St. Clair claimed that channel change would cause new interference of about one percent. This analysis, however, is mixed apples and oranges. Specifically, it used OET-69 methods to analyze the coverage and interference areas determined by the FCC’s curves rather than the areas determined by the Longley-Rice point-to-point propagation method. Under
continued...

Consequently, even if WBMS had lawfully earned Class A status, the WLBT-DT channel change proposal meets the relevant technical requirements, including interference protection rules and policies for Class A television stations! Nonetheless, out of an abundance of caution, Civic respectfully submits and requests acceptance of this Supplement.

Finally, Civic respectfully requests that the Division move expeditiously to approve the WLBT-DT channel change. There are no material issues in dispute in this proceeding. Other than Civic, George S. Flinn and KM Communications, Inc. have filed Comments and Reply Comments supporting the proposed channel change, because Civic's proposal may permit the Commission to act on a long-stalled application for a new NTSC television station on Channel 51. Vicksburg Channel 35 Associates, LLC ("Vicksburg") initially opposed the *Notice* and filed a counterproposal, but Vicksburg subsequently withdrew its counterproposal. The only other party to this proceeding is WBMS's licensee, Gene A. Blailock. Mr. Blailock filed brief Comments opposing the *Notice* claiming an alleged "adverse impact" to WBMS based on a flawed technical analysis, and he filed brief Reply Comments opposing Vicksburg's counterproposal. As demonstrated previously and as confirmed again herein, the WLBT-DT channel change proposal offers tangible public interest benefits without causing *any* interference to Class A television stations, including WBMS. Consequently, the instant proceeding is ripe for a grant.

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OET Bulletin 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," coverage and interference are calculated using Longley-Rice, not the FCC's curves.

⁶ *Amendment to Section 73.622(b) (Boca Raton, Florida). DA 02-3176, rel. Nov. 20, 2002.*

Conclusion

Civic is eager to bring DTV service – including the CBS network's prime time HDTV programming fare – to the Jackson market. Because there are no material issues in dispute in this proceeding, the Division should act now to permit a more efficient use of spectrum, facilitate the DTV transition, and open the possibility for new NTSC television service by changing WLBT-DT's channel as the Division first proposed two years ago today.

Respectfully submitted,

CivCo, INC.

By: 

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February 20, 2003

Exhibit A

TECHNICAL SUPPLEMENT
INTERFERENCE ANALYSIS TO WBMS-LP
TO SUPPORT THE
PETITION FOR RULE **MAKING** TO
MODIFY THE DTV ALLOTMENT TABLE
STATION WLBT-DT
JACKSON, MISSISSIPPI

Technical Statement

This Technical Supplement was prepared on behalf of WLBT-DT in support of the pending Petition *for* Rule Making to modify the DTV allotment of WLBT-DT from channel 51 to channel 9.¹ This supplement analyzes the predicted interference from the proposed WLBT-DT Channel 9 allotment to first-adjacent channel station WBMS-LP assigned to Jackson, Mississippi. As discussed below, based upon the Commission's OET-69 DTV interference model, no interference to either the licensed or authorized WBMS-LP facility is proposed.²

Attached as Figure 1 is a section of the results from the Commission's OET-69 interference program toward both the licensed and authorized WBMS-LP facility. As can be seen from the results, no interference from WLBT-DT is predicted to WBMS-LP.

Charles Cooper

du Treil, Lundin & Rackley, Inc
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February 13, 2003

¹ The WLBT-DT Rule Making FCC File Number is BPRM-20000803AAB.

² The WBMS-LP licensed facility FCC File number is BLTVL-19950922IE.
The WBMS-LP authorized facility FCC File number is BPTVL-20010116AFC

Figure 1

RESULTS FROM FCC OET-69 DTV INTERFERENCE PROGRAM TOWARD
LICENSED AND AUTHORIZED WLBT-LP.

Date: 02-13-2003 Time: 10:18:11

Record Selected for Analysis

WLBT-TV BPRM -20000803AAB JACKSON MS US
 Channel 09 ERP 3.2 kW HAAT 00610 m RCAMSL 00625 m
 Latitude 032-12-49 Longitude 0090-22-56
 Status APP zone Border
 Last update 00000000 Cutoff date 00201220 Docket
 Comments
 Applicant CIVCO. INC.

Analysis of Interference to Affected Station 14

Analysis of current record

Channel	Call	City/State	Application Ref. No.
10	WBMS-LP	JACKSON MS	BLTVL -1995092213

Stations Potentially Affecting This Station

Chan	Call	City/State	Dist (km)	Status	Application Ref. No.
09	WLBT-TV	JACKSON MS	20.9	APP	BPRM -20000803AAB
10	WBIO	BIRMINGHAM AL	341.7	CP	BPET -20011218ABG
10	WALA-TV	MOBILE AL	288.6	LIC	BLCT -2347
10	KTVE	EL DORADO AR	209.7	LIC	BLCT -19870817KF
10	KLFY-TV	LAFAYETTE LA	296.7	LIC	BLCT -20000731AET
10	WMAB-DT	MISSISSIPPI STATE MS	151.9	CP MOD	BMPEDT -20020313AAK
10	WMAB-DT	MISSISSIPPI STATE MS	151.9	GRANT	BPRM -20010629ACP
10	WKNO	MEMPHIS TN	319.0	CP	BPET -20021112ABZ

Proposal causes no interference

Date: 02-13-2003 Time: 10:44:31

Record Selected for Analysis

WLBT-TV BPRM -20000803AAB JACKSON MS US
 Channel 09 ERP 3.2 kW HAAT 00610 m RCAMSL 00625 m
 Latitude 032-12-49 Longitude 0090-22-56
 Status APP Zone Border
 Last update 00000000 Cutoff date 00201220 Docket
 Comments
 Applicant CIVCO. INC.

Analysis of Interference to Affected Station 15

Analysis of current record

Channel	Call	City/State	Application Ref. No.
10	WBMS-LP	JACKSON MS	BPTVL -20010116AFC

Stations Potentially Affecting This Station

Chan	Call	City/State	Dist (km)	Status	Application Ref. No.
09	WLBT-TV	JACKSON MS	20.9	APP	BPRM -20000803AAB

Proposal cause8 no interference

CERTIFICATE OF SERVICE

I, Rayya Khalaf, a legal secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 20th day of February 2003, I caused a copy of the foregoing **Section 1.65 Supplement** to be served on the following:

By Hand:

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